IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WA.No. 253 of 1998(A)

AGAINST THE JUDGEMENT IN OP.284/1998 Dated 28/01/1998
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APPELLANT: PETITIONER IN OP

MARIAM KOSHY W/o MATHEW ALEXANDER PANICKER
LOWER PRIMARY SCHOOL ASSISTANT, M.G.M.LOWER
PRIMARY SCHOOL, PUNNAKOD, POOYAPPALLY P.O.
KOTTARAKKARA

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS: RESPONDENTS IN O.P
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1. JOLLY VARGHESE, TEACHER IN CHARGE,
   M.G.M. LOWER PRIMARY SCHOOL, PUNNAKODE,
   POOYAPPALLY P.O., KOTTARAKKARA
2. THE MANAGER, M.G.M. LOWER PRIMARY SCHOOL,
   PUNNAKODE, POOYAPPALLY P.O., KOTTARAKKARA
3. THE ASSISTANT EDUCATIONAL OFFICER, VELIYAM
   KOTTARAKKARA
4. THE DISTRICT EDUCATIONAL OFFICER, KOTTARAKKARA
5. THE DEPUTY DIRECTOR (EDUCATION), KOLLAM
6. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
   THIRUVANANTHAPURAM
7. STATE OF KERALA REPRESENTED BY THE
   PRINCIPAL SECRETARY, DEPARTMENT OF GENERAL
   EDUCATION, THIRUVANANTHAPURAM

R3 TO R7 BY GOVT PLEADER SRI BENNY GERVASIZ
R1 BY ADV. SRI.N.SUGATHAN
SRI.S.SANTHOSH KUMAR
R2 BY ADV. SMT.V.P.SEEMANDINI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 23/07/2007, THE COURT ON 10/08/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 253 of 1998

Dated: 10th August 2007

JUDGMENT

Radhakrishnan, J.

The point in controversy is whether Ext. R2(a) letter dated 25.11.1989 given by the petitioner relinquishing the post of Headmaster is a permanent relinquishment within the meaning of Rule 44 (1) of Chapter XIV-A of the Kerala Education Rules.

2. The headmaster of an aided L.P school had availed of leave from 25.11.1989 to 09.02.1990. Petitioner and others in the school were not qualified to be promoted to the post of headmaster. One Kesava Pillai was the only eligible person to be appointed to the post of headmaster since he had completed 50 years of age. Petitioner had neither acquired the test qualification; nor had she completed 50 years of age at that time and hence she could not be appointed as headmaster. However, Manager had obtained relinquishment letters from all the teachers including the petitioner even though petitioner could not have aspired for that post at that time. Later the post of

headmaster became vacant on 30.06.1990 and therefore Kesava Pillai was appointed on a regular basis as headmaster from 01.07.1990 and he retired from service on superannuation on 31.05.1993. By that time petitioner had completed 50 years of age as on 14.05.1993 and became fully qualified to hold the post of headmaster in the vacancy which arose on 01.06.1993. Manager however without appointing the petitioner, who was the seniormost qualified person, appointed the first respondent from 02.07.1993 who had put in only three years of service and was unqualified. Aggrieved by the same petitioner submitted a representation before the Assistant Educational Officer on 03.07.1993 and again on 27.10.1994 and received communication from the Assistant Educational Officer stating that the Director of Public Instruction had already rejected her representation. Later she had to move the Government by filing representation dated 23.11.1994. Due to the failure on the part of the Government in disposing that representation she had to file O.P. No 12042 of 1997 before this court which was disposed of on 14.07.1997 directing the Government to pass orders on the representation. Government rejected the request of the petitioner on the ground that she had permanently relinquished her

claim for appointment to the post of headmaster. Aggrieved by the same she has approached this court by filing O.P. No 284 of 1998. Learned single judge dismissed the writ petition stating that Ext. R2 (a) letter would amount to permanently relinquishing the claim for appointment to the post of headmaster. Aggrieved by the same this appeal has been preferred.

3. Appeal was originally dismissed by Division Bench. Later that Bench reviewed that judgment noticing the fact that the Bench had not considered the impact of the decision of this court in George v. State of Kerala (1998 (2) KLT 637). Judgment was then recalled and the case is now posted before us.

4. The entire dispute centres round the validity or otherwise of Ext. R2(a) relinquishment letter. Headmaster of the aided school had taken leave for the period from 25.11.1989 to 09.02.1990. Petitioner was not qualified at that time to be appointed to the post of headmaster. Hence one Kesava Pillai who he had got permanent exemption on completion of 50 years of age was appointed as headmaster. Manager had obtained relinquishment letters from other teachers including the petitioner. In our view, there was no necessity for obtaining relinquishment letters from the petitioner

since she was not qualified to be appointed to the post of headmaster. She had neither acquired the test qualification nor had she completed 50 years of age at that time. Kesava Pillai though was having lesser length of service was qualified for promotion and he was appointed as Headmaster since the petitioner was not qualified on that date. Kesava Pillai retired on superannuation on 31.5.1993 and the vacancy of Headmaster arose on 1.6.1993 petitioner was qualified and was the seniormost teacher. Manager denied promotion to the petitioner on the strength of Ext. R2(a) relinquishment letter stating that the petitioner had permanently relinquished her claim to the post of Headmaster.

5. The stand taken by the Manager, educational authorities as well as the Government is not legally sustainable. Rule 44A of Chapter XIV -A of the Kerala Education Rules is the provision dealing with the appointment of Headmaster. Scope of the above mentioned rule came up for consideration before this court in George v. State of Kerala (1998 (2) K.L.T 637). Referring to Note to Rule 44 (1) this court held as follows:

> "Secondly, going by the Note itself the said relinquishment itself cannot be used on each and every occasion. The expression "Whenever the Manager intends to appoint" would show that

> whenever manager overlooks the claim of a senior teacher to be appointed as Headmaster, manager has to get a written consent from such senior claimant renouncing his claim permanently. In other words, there cannot be any permanent relinquishment to the post of Headmaster. Apart from that, Ext. R3(a) cannot have any legal validity, since no approval was obtained from the educational officer concerned. Therefore, the same cannot be given effect to for all years to come."

The above mentioned decision was quoted with approval by a Division Bench of this court in Rajasree v. Secretary to Government (2000 (2) KLT 248) wherein the Division Bench held as follows:

> "Scope of R.44(1) was considered by this court in George v. State of Kerala (1998 (2) KLT 637) and this court held that there cannot be any permanent relinquishment to the post of Headmaster. That apart, we are of opinion that relinquishment can only be of an existing right. Mere chance of promotion is not a right and if it is not a crystallised right, there is no question of any relinquishment."

Note to Rule 44 (1) states that whenever the Manager intends to appoint a person as Headmaster other than the senior claimant, the Manager shall obtain a written consent from such senior claimant renouncing his claim permanently. Such consent shall have the approval of the educational officer concerned. A person can relinquish his right for promotion only when the right accrues. Relinquishment can only be of an existing right. Petitioner was not qualified to be appointed to the post of Headmaster on

30.6.1990 and therefore there was no question of relinquishing her right because she had no right to be relinquished. A non-existing right cannot be relinquished. Ext. R2(a) letter has therefore no legal basis. Petitioner had completed 50 years of age on 14.05.1993 and then only she became fully qualified to be appointed as headmistress when the regular vacancy arose on superannuation of Kesava Pillai on 31.05.1993. Petitioner had got legitimate claim to the post of Headmaster on 1.6.1993. Manager, in our view, was not justified in denying appointment to her to the post of Headmaster on the strength of Ext. R2(a) letter dated 25.11.1989. Ext. P8 government order dated 6.11.1997 therefore cannot stand in the eye of law. Ext. R2(a) letter has no legal validity and could not have been relied upon by the Manager to deny the post of headmaster to the petitioner when the regular vacancy arose on 1.6.1993.

6. Petitioner has already retired from service on superannuation on 31.05.1998. Counsel submitted that the petitioner is entitled to get salary for the period from 1.6.1993 to 31.3.1998 and a direction be given to the Government to pay salary and other benefits and to recover the same from the Manager. On facts we find that there is some laches on the part of the petitioner also in ventilating her claim. When Manager denied appointment to the petitioner she filed Ext. P2 complaint before the

Assistant Educational Officer on 3.1.1994. Since nothing was heard on Ext P2 she filed Ext. P3 representation before the District Educational Officer on 20.10.1994 which was rejected by the Director of Public Instruction as is evident from Ext. P4 communication received from the Assistant Educational Officer. Later she filed Ext P5 representation dated 23.11.1994 before the Director of Public Instruction which was kept pending. Petitioner did not pursue the same. Later she filed Ext P6 representation on 21.6.1997 which was disposed of by Ext. P8 dated 6.11.1997 and she retired from service on 31.05.1998. She filed the present original petition on 5.1.1997 and it is seen that no efforts have been made to see that matter be heard early. If the petitioner wants to proceed against the Manager for compensation she may either move the Government for invoking the provisions of the Revenue Recovery Act if it is legally possible or approach the civil court about which we express no opinion.

7. We are however not inclined to give a direction to the Government to pay the amount since petitioner had not worked during that period. Petitioner if so advised may take steps against the Manager through the methods known to law. Writ appeal is therefore allowed. Judgment of the learned single judge is set aside. It is declared that petitioner was entitled to be appointed as Headmistress on 1.6.1993 and the Manager was not

justified in acting upon Ext. R2(a) relinquishment letter to deny promotion to the post of the Headmistress in the vacancy which arose on 1.6.1993. We, therefore, declare that petitioner be treated as continuing as Headmistress notionally from 1.6.1993 till retirement and the period be reckoned for the purpose of pension. Original Petition is allowed as above.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

10/08/2007
en/

[true copy]